COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Notice of Inquiry Provision of Default Service	)	D.T.E. 02-40

SUPPLEMENTAL COMMENTS OF NSTAR ELECTRIC

Date: September 9, 2002

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Executive Summary

The Supplemental Comments of NSTAR Electric respond to issues raised in the Initial Comments filed with the Department of Telecommunications and Energy in Default Service, D.T.E. 02-40. These comments are designed to respond to proposals made in this proceeding that focus on whether changes to the Department's current policies for Default Service are warranted, either now or in March 2005, when Standard Offer Service expires under the Electric Restructuring Act of 1997.

Notably, in this proceeding, there is agreement that the implementation of the Restructuring Act has produced significant benefits for Massachusetts customers and that the competitive market is functioning consistent with the goals and objectives of the Restructuring Act. Customers are paying less for electricity than they would have paid without the changes instituted by the Act, a wholesale market for electric generation is in place and moving toward maturity, and the retail market is succeeding, with over 25 percent of total customer load moving to the competitive market. The existing structure of Default Service is enabling the development of a competitive retail market, while also ensuring that smaller customers do not lose out on the benefits provided by the establishment of a competitive generation market. In that regard, in the medium and large commercial and industrial customers classes, the competitive market is serving nearly three times the load than is served by the distribution companies in relation to Default Service.

Accordingly, the proposals offered to the Department in this proceeding primarily focus on changes to Default Service involving small C&I and residential customers. The proposals reflect a broad spectrum of approaches with varying goals and objectives and differing visions of the future of Default Service. As recommended by many commenters in this proceeding, the Department should identify a set of guiding principles against which the varying proposals will be evaluated. NSTAR Electric, along with the Attorney General, Massachusetts Community Action Program Directors Association, Inc. and Massachusetts Energy Directors Association (together, "MASSCAP") and the Utility Workers Union of America, AFL-CIO ("UWUA"), UWUA Local 369 and the Massachusetts Union of Public Housing Tenants (collectively, the "Unions"), have provided the Department with a set of overarching assumptions and guiding principles that are based on the objectives of the Restructuring Act and are designed to result in the establishment of customer-oriented Default Service policies (the "Joint Statement").

Based on the Joint Statement and the principles adopted by the Department in its previous proceedings on Default Service, NSTAR Electric recommends that the Department evaluate proposals in light of the following criteria:

- Default Service prices should be market based, reflecting no more and no less than the cost incurred to procure Default Service supplies from the competitive market;
- Customer confusion should be minimized;

- The concept of retail customer choice should be maintained; and
- Changes to the existing structure of Default Service should be designed to produce measurable benefits for customers.

In short, the application of these principles are designed to ensure that any changes that may be instituted as a result of this proceeding are designed to further the goals of the Restructuring Act, which is to produce tangible benefits for customers, without adding undue complexity and increased costs for smaller customers for the sake of "increased retail competition."

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SUPPLEMENTAL COMMENTS OF NSTAR ELECTRIC

I. INTRODUCTION

NSTAR Electric[1] ("NSTAR Electric" or the "Company") hereby responds to certain issues raised by participants in initial comments ("Initial Comments")[2] filed with the Department of Telecommunications and Energy (the "Department") in the above-referenced proceeding. Approximately 30 participants filed initial comments, including electric-distribution companies,[3] competitive suppliers,[4] trade associations/organizations,[5]

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1 NSTAR Electric is composed of Boston Edison Company, Cambridge Electric Light Company and Commonwealth Electric Company.

2 Unless otherwise noted, all citations to comments will refer to the Initial Comments filed in this proceeding.

3 Fitchburg Gas & Electric Light Company ("FG&E"); Massachusetts Electric Company and Nantucket Electric Company ("MECo"); and Western Massachusetts Electric Company ("WMECo").

4 Centrica North America ("Centrica"); Competitive Energy Services-Massachusetts, LLC ("CES"); Competitive Power Coalition ("CPC"); Competitive Retail Suppliers ("Competitive Retail Suppliers"); Constellation Power Source ("Constellation"); Dominion Retail, Inc. ("Dominion"); Duke Energy Trading and Marketing, LLC ("Duke"); PG&E National Energy Group ("PG&E"); TransCanada Power Marketing Ltd. ("TransCanada"); and TXU Energy Retail Company LP ("TXU").

5 Bay State Consultants ("Bay State"); ISO-New England, Inc. ("ISO"); National Energy Marketers Association ("NEM"); Northeast Energy Efficiency Council ("NEEC"); and Clean Water Action; Conservation Law Foundation; Massachusetts Energy Consumers Alliance; Massachusetts Public Interest Research Group; The Environmental League of Massachusetts; Union of Concerned Scientists (collectively, the "Environmental Group"), and the Utility Workers Union of America, AFL-CIO ("UWUA"), UWUA Local 369 and the Massachusetts Union of Public Housing Tenants ("MUPHT") (collectively, the "Unions").

governmental agencies[6] and customer groups.[7] These comments focus on whether changes to the Department's current policies for Default Service are warranted, either now or in March 2005, when Standard Offer Service expires under the Electric Restructuring Act of 1997 (the "Restructuring Act" or the "Act").

In this proceeding, there is significant agreement that the implementation of the Restructuring Act has produced significant benefits for Massachusetts customers (CPC at 1; Constellation at 2; TXU at 36-37). The Initial Comments submitted to the Department in this proceeding affirm that the competitive market is working for many customers, consistent with the goals and objectives of the Restructuring Act (CPC at 2; Centrica at 2; DOER at 17; Dominion at 2; MECo at 3-4; TXU at 36-37). Customers are paying less for electricity than they would have paid without the changes instituted by the Act, a wholesale market for electric generation is in place and moving toward maturity, and the retail market is succeeding, with over 25 percent of total customer load moving to the competitive market (CPC at 1; Constellation at 2, 4; DOER at 2). Moreover, the existing structure of Default Service is enabling the development of a competitive retail market, while also ensuring that smaller customers do not lose out on the benefits provided by the establishment of a competitive generation market. For example, in the medium and large commercial and industrial ("C&I") customers classes, the competitive market is serving nearly three times the load than is served by the distribution companies in relation to

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[6] Cape Light Compact ("Compact"); City of Newton, MA Public Buildings Department ("Newton"); The Division of Energy Resources ("DOER"); Massachusetts Technology Collaborative ("MTC"); and the Office of the Attorney General ("Attorney General").

[7] Massachusetts Community Action Program Directors Association, Inc. and Massachusetts Energy Directors Association (together, "MASSCAP"); The Energy Consortium ("TEC"); Massachusetts Energy Consumers Alliance ("Mass Energy"); and Western Massachusetts Industrial Customer Group ("WMICG").

Default Service (see DOER Attachment A (Migration by Customer Class (kWh)). As a result, proposals made in this proceeding that involve major changes in the provision of Default Service bear a heavy burden in demonstrating that customers will be better off under an alternative Default Service structure. In that regard, the Department must be careful to avoid instituting changes that add complexity and increased costs for smaller customers solely in pursuit of "increased retail competition."

In its previous investigation into the provision of Default Service, the Department relied on four guiding principles in formulating its Default Service procurement and pricing policies, which were: (1) Default-Service prices should be market based, be procured through reasonable business practices, and take into account the costs of providing Default Service, consistent with the development of robust competitive retail markets; (2) costs associated with providing Default Service should be minimized; (3) customer confusion should be minimized; and (4) a general consistency in Default Services across distribution service territories should be achieved, to the extent that such consistency is feasible and would provide benefits to customers. Default Service, D.T.E. 99-60-A at 4-5. These guiding principles make clear that the development of a competitive retail market is a means to an end, with the "end" being the achievement of savings for customers. In that regard, the application of these guiding principles in the Department's previous proceeding resulted in the establishment of reasonable and sound regulatory policies on the pricing and procurement of Default Service, and has resulted in a significant level of customer migration to competitive service.

In this proceeding, NSTAR Electric has joined with the Attorney General, MASSCAP and the Unions to recommend that Department adopt and follow similar

principles in reviewing proposed changes to its Default Service policies. See Joint Statement of Guiding Principles for the Future Provision of Default Service (August 9, 2002) (the "Joint Statement"). The Joint Statement encompasses a set of overarching assumptions and guiding principles that are based on the objectives of the Restructuring Act and are designed to result in the establishment of customer-oriented Default Service policies.

NSTAR Electric recommends that, consistent with the assumptions and principles embodied in the Joint Statement, as well as the guiding principles previously applied by the Department, the Department should evaluate proposals on the provision of Default Service in this proceeding using the following criteria: (1) Default Service prices should be market based, reflecting no more and no less than the cost incurred to procure Default Service supplies from the competitive market; (2) customer confusion should be minimized; (3) the concept of retail customer choice should be maintained; and (4) changes to the existing structure of Default Service should be designed to produce measurable benefits for customers. As in the past, the application of customer-oriented criteria will result in the establishment of reasonable and sound regulatory policies on the structure, pricing and procurement of Default Service.

II. THE DEPARTMENT SHOULD NOT INSTITUTE CHANGES TO THE STRUCTURE OF DEFAULT SERVICE UNLESS IT CAN BE DEMONSTRATED THAT DOING SO IS IN THE PUBLIC INTEREST

A. Under G.L. c. 164, § 1B(d), the Department Cannot Transfer the Obligation to Provide Default Service to an Alternate Supplier Without Finding that It Would Be in the Public Interest.

In this proceeding, several commenters recommend that the Department significantly modify the structure of Default Service to bring the "benefits of retail competition" to "all Massachusetts customers," or more specifically, to "residential and

smaller business customers" (see e.g., Centrica Initial Comments at 3, Competitive Retail Suppliers Initial Comments at 5; TXU Initial Comments at 11-12). Specifically, these commenters argue that the structure of Default Service should be changed to a "retail model," wherein the responsibility for Default Service is transferred from distribution companies to other competitive entities and a structure is put in place "to allow retail competition to thrive" (TXU at 7; see also, CPC at 2). To accomplish this objective, these commenters offer various "retail models" that all require the Department to implement one or more of the following changes: (1) an increase the price of Default Service to "replicate the price that a competitive retail entrant would charge" (Centrica at 15; see also CPC at 2-3; Competitive Retail Suppliers at 6-7; Dominion at 4; NEM at 2); (2) the unbundling of billing, collection and customer-information services from the distribution function (Centrica at 17; TXU at 24-29); and (3) the involuntary switching of customers from the distribution company to a competitive retail provider through an auction process (Competitive Retail Suppliers at 8-9; MECo at 14, 31; CPC at 2-3). As described below, all of these proposals are explicitly designed to "jump start" competition, even at the expense of smaller customers, and none of these proposals offer the Department a reasonable mechanism to build participation of smaller customers in the competitive marketplace without cost increases, unwarranted confusion and the potential for significant levels of customer dissatisfaction.

In addition, all of these proposals effect the transfer of the Default Service obligation to one or more competitive suppliers. In support of this proposition, these commenters refer to a provision of the Restructuring Act establishing Default Service (G.L. c. 164, § 1B(d)) (TXU at 31-35; MECo at 30). Under G.L. c. 164, §1B(d), the

Department is authorized to designate an "alternate generation company or supplier" to provide Default Service only if such alternate service is "in the public interest." Thus, this provision imposes an obligation upon the Department to apply a public-interest standard in determining whether entities other than distribution companies may provide Default Service.

To apply this standard, the Department must establish principles or criteria by which it will determine whether proposals to restructure Default Service are in the public interest. In that regard, NSTAR Electric proposes that the Department adopt principles that seek to "secure the benefits" of the competitive market for smaller customers, without imposing increased costs or placing restrictions on their ability to choose to receive Default Service from the distribution company. As stated above, a customer-focused public-interest standard would require that: (1) Default Service prices be market based, reflecting no more and no less than the cost incurred to procure Default Service from the competitive market; (2) customer confusion be minimized; (3) the concept of retail customer choice be maintained; and (4) changes to the existing structure of Default Service be designed to produce measurable benefits for customers.[8]

1. Proposals To Increase the Price Charged for Default Service To Equal the Price that Would Be Charged by Competitive Market Entrants Are Not Consistent with the Public Interest

Several participants suggest that the Department should increase the price charged

[8] As noted by TXU, the "public-interest requirement will constrain both suppliers and utilities from proposing alternate default service arrangements that do not provide benefits of competition to Massachusetts customers, or that try to provide those benefits by raising prices beyond what customers would otherwise pay" (TXU Initial Comments at 36). TXU suggests that the Department consider, at a minimum, the impact of such proposals on prices, quality of service and competition (id. at fn.22).

for Default Service to "replicate the price that a competitive retail entrant would charge" (Centrica at 15; see also, CPC at 2-3; Competitive Retail Suppliers at 6-7; Dominion at 4; NEM at 2). These commenters state that this would require the Department to "estimate the price that a retailer would be able to offer for similar service under competitive market conditions" (Centrica at 16; see also, Competitive Retail Suppliers at 4). This "estimated price" would be arrived at by adding costs to the current Default Service rate. These added costs would represent "all costs of providing the service," and would include, but would not be limited to: (1) the full costs of price and volume risk (Competitive Suppliers at 6); (2) an allocation of billing costs (id.); (3) an allocation of utility "overheads" (id.); and (4) normal profit margins (Centrica 15-17; see also, Competitive Retail Suppliers at 6; PG&E at 9). Under this model, small commercial, residential and low-income customers would pay significantly increased prices for Default Service for the sole purpose of ensuring that competitors are able to undercut the Default Service price. Such an outcome contravenes the Department's well-established policies on the development of competitive markets and is contrary to the provisions of the Restructuring Act. Therefore, proposals that raise prices for Default Service customers to engender retail competition are not consistent with the public interest, and should be rejected by the Department.

In Default Service, D.T.E. 99-60-A, the Department set forth its proposal for the cost components that would be appropriate for inclusion in the Default Service rate. In that regard, the Department explicitly considered, and rejected, a proposal to include added costs, such as marketing costs incurred by retail suppliers, in the price for Default Service, stating that "it is inappropriate to include artificial costs for the purpose of

spurring competition."[9] D.T.E. 99-60-A at 11. The Department further stated that:

> Inclusion of such costs would inflate artificially the [D]efault [S]ervice price and would not be consistent with the General Court's mandate that the price of [D]efault [S]ervice not exceed the average monthly price of electricity. . . . The Department does not accept the premise that [D]efault [S]ervice has an insurmountable cost advantage due to the avoidance of marketing and other retail costs . . . .

D.T.E. 99-60-A at 11. In addition to being contrary to Department policy, the commenters in this proceeding have offered no suggestion as to the way in which such costs may be included in the Default Service price without violating the provisions of the Restructuring Act that set the framework within which the Default Service price is determined. See, G.L. c. 164, § 1B(d).

As recognized by the Department, the inclusion of these costs in the Default Service price serves no other purpose than to try to guarantee the success of market entrants. For example, in making the suggestion that the price charged for Default Service should "replicate" the price offered by competitive market entrants, the statement is also made that:

> Retailing business costs are best known to the retailers themselves. Their participation in the process can be taken as credible evidence that these costs are not excessively low, while an overestimate of these costs will ultimately be remedied through competitive switching.

(Centrica at 17).

These comments would have the Department establish the highest possible price for Default Service for the purpose of ensuring that market entrants have the opportunity to charge a price that exceeds their costs. Thus, in practice, the recommended

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[9] The Department found "administrative costs" incurred in procuring Default Service supply would be appropriate for inclusion in the Default Service price and stated that it would accomplish this step in the base-rate proceedings of electric distribution companies. D.T.E. 99-60-A at 9-10.

computation of the Default Service rate establishes an artificial price signal in an attempt to guarantee that market entrants will be able to gain market share. This type of uneconomic "competition" has never been endorsed by the Department, which has stated explicitly that its "role [in promoting competition] is not to guarantee the success of entrants, but rather to put in place, a market structure that allows efficient competition to thrive." See e.g., Gas Unbundling, D.T.E. 98-32-B at 25, 30 (1999). In this proceeding, the Attorney General (and other commenters) echo this concern stating that "[w]e should not try to achieve competition by raising rates for Default Service to assist competitive suppliers' entry into the marketplace (see e.g., Attorney General at 4).

Proposals to increase the Default Service rate to include costs incurred by retail suppliers or to include distribution costs that are not avoided by the distribution company as customers migrate to Default Service will inappropriately increase Default Service rates and will leave customers worse off than they are with the current Default Service structure.[10] Therefore, these proposals are not consistent with the public interest and should be rejected by the Department.

2. Proposals To Unbundle Billing and Customer-Information Services Are Contrary to the Provisions of the Restructuring Act and Department Precedent

Commenters proposing an alternative "retail model" also recommend to the Department that billing and collection and customer-information services be unbundled from the distribution function (Centrica at 17-18; Competitive Retail Suppliers at 5; TXU at 21-30). Specifically, these commenters state that a structure must be put in place that

[10] The issue of "avoidable" or incremental distribution costs is discussed in Section III.A, below.

allows the retail marketer to "manage all aspects of the customer relationship" and that would limit the role of the distribution company to a "largely invisible," wires-only function (Centrica at 17; TXU at 20-21). Under this model, retail marketers would perform all billing and collections functions, resolve billing or accounting disputes, handle reports of emergency and non-emergency service problems, as well as service disconnections, and other customer-service activities (Centrica at 17; Competitive Retail Suppliers at 9). However, in accordance with the provisions of the Restructuring Act, the Department has investigated the costs and benefits of unbundling metering, billing and information services ("MBIS") from the distribution function and has found that no legislative action should be taken to allow for such unbundling, because no substantive savings would result to consumers and there would be adverse disruptions to employee staffing levels of the distribution companies. Report to the General Court on Metering, Billing and Information Services, at 31-32 (December 29, 2000) (the "MBIS Report"). As discussed below, the "retail services" proposed for unbundling in this proceeding are either encompassed within MBIS, are activities that cannot be unbundled from the distribution function, or are services that, if unbundled, are meaningless to the development of a retail market without the unbundling of MBIS.

In particular, TXU recommends that the Department conduct a proceeding to unbundle "non-monopoly retail services" from distribution rates and make them subject to competition (TXU Initial Comments at 24). In support of the proposition that the Department has the authority to unbundle the services identified by TXU, TXU cites: (1) a general provision in the Restructuring Act directing the Department to require electric companies to "accommodate retail access. . . and choice of supplier, unless

otherwise provided by [G.L. c. 164]" (id., citing G.L. c. 164, § 1(A)(a)); (2) the Department's own statements in generic restructuring dockets conducted prior to the enactment of the Restructuring Act concluding that it had the authority to determine which distribution services may subject to competition (id., citing, D.P.U. 95-30 and 96-100) (id.); and (3) the General Court's prohibition on the unbundling of MBIS without legislative action under Section 312 of the Act ("Section 312") (id. at 25).[11] However, the "non-monopoly" services that TXU seeks to unbundle in this proceeding are either indistinguishable from the billing and information services encompassed within MBIS, or are activities that are linked to the core distribution function, and therefore, are legitimate business activities that are not susceptible to "unbundling."

For example, recognizing that the Legislature has explicitly prohibited the Department from unbundling MBIS services, TXU attempts to distinguish between MBIS and "non-MBIS retail services." (id. at 26). Specifically, TXU identifies "non-MBIS retail services" as: (1) customer service, including customer inquiry and account-management services; (2) credit and collections; (3) sales and marketing; (4) product development; (5) wholesale procurement (to the extent not included in wholesale generation costs); and (6) advertising (id.). TXU claims that the Department has "defined" MBIS as: (1) the calculation of bills based on metered consumption and the applicable prices; (2) the preparation and distribution of the invoice; (3) the transmission of billing data; and (4) the receipt of account payables and disbursement of payments,

[11] In a convoluted argument of statutory interpretation, TXU contends that the General Court's prohibition that "[a]ny unbundling and creation of retail competition of such [MBIS] services shall not commence unless statutorily allowed through amendments to chapter 164. . . ." demonstrates that, but for the statutory prohibition, the Department has broad authority to unbundle and create retail competition for MBIS (TXU Initial Comments at 25-26).

and that no member of the legislature or any interested party has taken issue with this definition (id. at 26-27). Thus, TXU concludes that neither Section 312 of the Act, nor any other statutory provision prohibits the Department from opening the "retail services" identified by TXU to competition (id. at 26).

In fact, TXU's recommendation to unbundle "non-MBIS retail services" is a disingenuous attempt to sidestep the policy determinations and legislative directives set forth in the Restructuring Act in relation to MBIS services. For example, contrary to TXU's claim that the Department "defined" and limited MBIS to the four activities cited by TXU, the Department stated in its Report to the General Court that "billing-related services are associated with: (1) the calculation of bills . . . ; (2) the preparation and distribution of the invoice; (3) the transmission of billing data . . .; and (4) the receipt of account payables and disbursement of payments . . . ." MBIS Report, at 5 (emphasis added). The Department's statements do not delineate the specific services that are, or are not, encompassed within the definition of "MBIS," nor did the Department indicate that it was attempting to make such a delineation. As a result, there is no basis for TXU's suggestion that "customer inquiry and account-management" and "credit and collections" are services that the Department has expressly excluded from the definition of "billing and information services" and that could be unbundled by the Department without contravening the provisions of the Restructuring Act relating to MBIS. It is even more unclear how "sales and marketing," "product development" or "advertising" could be viewed as services that are separate from the core distribution function or how the unbundling of these activities, if undertaken, would represent a meaningful step in promoting retail competition, especially without the unbundling of MBIS services.

As noted by TXU, the Department has already evaluated the costs and benefits involved with the opening of MBIS to competition and, as a result of its investigation, has recommended to the General Court that "no legislative action be taken to allow competition of billing-related services as it relates to the electric industry because no substantive savings would result to customers and there would be disruption to employee staffing levels of the distribution company." MBIS Report at 42. TXU has not provided any basis in this proceeding to warrant a change in those findings. Moreover, the "non-MBIS retail services" identified by TXU are either encompassed by MBIS (as acknowledged by TXU) or represent activities (not services) that are not appropriate for, or susceptible to, any "unbundling" from the distribution function. Accordingly, TXU's unbundling proposal is not consistent with the Restructuring Act, Department precedent or the public interest and should be rejected y the Department.[12]

3. TXU's Suggestion That Alternate Providers of Default Service May Offer Billing and Information Services Is A Misinterpretation of the Restructuring Act

As an alternative to unbundling "retail services" from distribution services and subjecting such services to competition, TXU contends that, pursuant to G.L. c. 164, § 1B(d) ("Section 1B(d)"), the Department may authorize "an alternate generation

[12] TXU also attempts to re-argue the issue of allowing third parties to provide billing services to customers. Specifically, TXU recommends that the Department require retailers to purchase (distribution companies to sell) billing services at cost-based tariffed rates (TXU Initial Comments at 29). TXU claims that this approach would allow distribution companies to continue to create and send bills to retail customers, as required by G.L. c. 164, § 1D, but would also allow retailers to control the content and the format of the bill (except as regarding "distribution and other regulated rate information") (id. at 29-30). This suggestion ignores the fact that the Department has now twice visited the issue of allowing third-party billing and has not found a means to allow the option within its existing statutory framework. MBIS Report at 42; Competitive Billing, D.T.E. 01-28, at 5 (Phase II). Moreover, under TXU's proposal, customers would pay more for billing services because both the distribution company and the retailer purchasing the bill would incur costs.

company or supplier" to provide not only generation services, but also to "provide any or all of the services provided by the utility, including retail services such as billing and information services" (TXU Initial Comments at 32). TXU attempts to support this recommendation with a contrived interpretation of the provisions of the Restructuring Act that defies common sense and violates basic principles of statutory construction.

For example, TXU's interpretation completely ignores that fact that the plain language of Section 1B(b) does not refer to an "alternate default service provider," as suggested by TXU (TXU Initial Comments at 33), but rather, specifically states that "the Department may authorize an alternate generation company or supplier to provide default service." Both "alternate generation company" and "supplier" are defined terms in G.L. c. 164, § 1, and both definitions specifically state that these entities will provide only "generation service."[13] Under TXU's interpretation, G.L. c. 164, § 1 would authorize a generation company or competitive supplier to provide transmission and distribution services to customers when acting as the Default Service provider, which is an unreasonable reading of the statutory provisions.

In addition, TXU rests its reading of Section 1B(d) on the definition of "Default Service" set forth in G.L. c. 164, § 1, which states that "Default Service" is:

> the electricity services provided to a retail customer upon either the (i) failure of a distribution company or supplier to provide such electricity services as required by law or as contracted for under the standard service offer, (ii) the completion of the term of the standard service offer, or (iii) upon the inability of a customer to receive standard offer service transition rates during the term of the standard service pursuant to section 1B (of G.L. c. 164).

[13] A "generation company" is defined as " a company engaged in the business of producing, manufacturing, or generating electricity for retail sale to the public" and "supplier" is defined as "any supplier of generation service to customers. . . ." G.L. c. 164, § 1.

Id. Specifically, TXU's bases its claim on the Act's definition of "electric services," even though Section 1B(d) refers only to "electricity services," which is not a defined term under G.L. c. 164, § 1 (TXU Initial Comments at 33). Under the general rules of statutory construction, it is not reasonable to assume that the legislature intended to refer to "electric service" rather than "electricity service" in defining "Default Service." Rather, the statute must be construed as written, in keeping with its plain meaning, and so as to give effect to each word. See Massachusetts Community College Council v. Labor Relations Comm'n, 402 Mass. 352, 354, 522 N.E.2d 416 (1988); Bankers Life & Cas. Co. v. Commissioner of Ins., 427 Mass. 136, 140, 691 N.E.2d 929 (1998). Stop & Shop Supermarket Co. v. Urstadt Biddle Properties, Inc., 433 Mass. 285, 289 (2001). Moreover, "electricity services" is not a defined term, and therefore, its meaning must be derived from the plain meaning of the text and the context within which the language is used. Commonwealth v. Smith, 431 Mass. 417, 421 (2000) ("a statute must be interpreted according to the intent of the Legislature ascertained from all its words construed by the ordinary and approved usage of the language, considered in connection with the cause of its enactment, the mischief or imperfection to be remedied and the main object to be accomplished, to the end that the purpose of its framers may be effectuated").

In that regard, "Default Service," as defined in G.L. c. 164, § 1, is a service provided to retail customers upon either the "failure" of a distribution company or competitive supplier to provide "electricity services," or upon the inability of a customer to receive Standard Offer Service or the completion of the Standard Offer Service period. Since "electricity" is supplied to customers by generation companies and competitive suppliers, which are the entities designated by the statute as eligible to provide Default

Service, and since electricity service is the service provided to customers of the distribution company as Default Service or Standard Offer service, the use of the term "electricity service" in this context refers to alternatives to generation services. Therefore, when read in context, there can be no doubt that providers of "Default Service" are limited to the provision of generation services. Accordingly, the provisions of G.L. c. 164, § 1B(d) that authorize the Department to designate an alternate Default Service provider cannot be interpreted as allowing anything other than the provision of generation services by a company other than the utility.

TXU's interpretation is inaccurate even if the legislature intended to use the term "electric service." "Electric service" is defined in G.L. c. 164, § 1, as the "provision of generation, transmission, distribution, or ancillary services" (emphasis added). Even if the definition of "electric services" applied to Default Service, which it does not, the term "electric services" is defined using the conjunction "or," and therefore, does not necessarily refer to each and every of the listed services (i.e., generation, transmission, distribution and ancillary services) when it is used in the Restructuring Act. As a result, the term "electric service" must be viewed in the context of its specific use in a given statutory provision.

For example, G.L. c. 164, § 1B(b) establishes Standard Offer Service and states that: "Any customer who has chosen retail access from a non-affiliated generation company but who otherwise requires electric service due to said generation company's failure to provide contracted service shall be eligible for service through the distribution company's default service provided pursuant to the provisions of subsection (d)." In this context, the term "electric service" refers only generation service and not to transmission

or distribution services. Accordingly, the definition of "Default Service" cannot reasonably be construed so as to allow a generation company or competitive supplier to provide transmission and distribution services to customers when acting as the Default Service provider.

4. Proposals To Switch Default Service Customers to Competitive Service Without Their Consent Are Not Consistent with the Public Interest

Several commenters recommend that the Department move distribution companies out of the Default Service function through a "retail auction" process, whereby customers would be unilaterally switched to supplier service and would not have the choice to continue taking Default Service under the terms offered by the distribution company (Competitive Suppliers at 8-9; Centrica at 15; CPC at 2-3; MECO at 14, 31; see also PG&E at 8). Most of these auction proposals also involve the establishment of an "adder" reflecting acquisition costs or other costs to raise the Default Service price for the purpose of spurring competition (Centrica Initial Comments at 19; TXU Initial Comments at 35, fn.21 ("TXU supports the concept of an auction, but only if it is accompanied by rate unbundling and structural reforms recommended [by TXU]);" (see also Competitive Retail Suppliers at 4; MECo at 15-19). Since these models will result in both increased costs and the involuntary transfer of customers to supplier service, customers would be worse off under these models than they are with the current structure of Default Service, and therefore, these models cannot be deemed to be in the public interest, as required by G.L. c. 164, § 1B(d).

a. The Retail Auction Proposal Set Forth By MECo Will Raise the Price of Default Service

In this proceeding, MECo proposes a retail-auction process that would provide retail suppliers with the opportunity to offer "Basic Service" to retail customers as an "alternative" to Default Service (MECo Initial Comments at 2). NSTAR Electric recognizes that MECo's proposal is well-intentioned and views it as a carefully crafted attempt to address concerns that smaller customers are not participating in the competitive market to the extent of larger customers. Although MECo's proposal effectively represents a "middle ground" between the current structure of Default Service and the retail models recommended by TXU and other competitive retail suppliers in this proceeding, NSTAR Electric has concerns that, like the other retail models, implementation of the MECo model will add complexity and increase costs for customers.

Specifically, under MECo's proposal, MECo would grant rights to suppliers to serve its Default Service customers via a series of auctions, through which suppliers would gain the opportunity to serve smaller Default Service customers "at retail" and under terms and conditions approved by the Department (MECo Initial Comments at 8, 13-14). Like the other retail models proposed in this proceeding, MECo's proposal will raise the price of Default Service for its customers, under the presumption that the increased price would be justified in spurring a competitive retail market for smaller residential and commercial customers (id. at 17). This is because, in MECo's proposal, retail prices for all customers subject to the assignment would be set at the highest winning bid for the four auctions over the term of the initial procurement program (id. at 15). MECo acknowledges that, under its proposal, the "basic service retail rate will be

higher, and potentially considerably higher, than would occur if the bids were averaged" as in other Default Service models (id. at 18).

Although MECo proposes to offset these higher prices through a "retail value credit," it seems possible that the only way that customers who are auctioned to an alternate provider will not end up with a total bill that is higher than what they currently pay, is if every customer in the group of customers served by the alternate provider(s) chose not to leave the alternate provider to purchase supply on the competitive market.[14] MECo acknowledges that its proposal "may leave behind customers, who are unable to find an alternative supply" (id. at 18). Because MECo's proposal has the potential to result in a significant number of its customers paying higher prices for electricity than they would under the current Default Service structure, solely for the purpose of stimulating the retail market in the short term, this proposal is not consistent with the public interest.

b. The Retail Auction Proposal Set Forth By MECo Will Involve the Unilateral Assignment of Customers to Supplier Service

As noted previously, MECo's proposal involves "transferring its Default Service obligations" to winning bidders through a series of auctions (MECo Initial Comments

[14] This interpretation is derived from the following statement in MECo's Initial Comments:

> The retail value credit would be reset every time that the basic service retail rate or the basic service bid prices changed, leading to a change in the margin that was collected by [MECo]. Thus, if no customers in the class were taking service from a competitive supplier, the retail value credit would immediately transfer the margin received by [MECo] back to the participating customers in the class, producing a total bill that would be the same as that produced by an average-cost based price for basic service for participating customers without a retail value credit. . . . However, the approach proposed here sets a market price for commodity equal to the highest of the winning bids awarded and thus creates an incentive and margin for customers to move to the competitive market" (MECo Initial Comments at 16).

at 31). MECo attempts to reconcile this action with the statutory provisions of G.L. c. 164, § 1F(8), which explicitly prohibit the switching of customers without their consent, by noting that its proposal involves only the designation of an alternate provider of Default Service that would remain regulated by the Department, which therefore, does not involve the involuntary switching of customers to competitive suppliers (id.). MECo bases its analysis on the "fundamental difference" between Default Service, which is "fully regulated by the Department" and the "unregulated market contract," which is a voluntary service that is chosen by the customer (id. at 31).

Even if the Department were to determine that Section 1F(8) would not prohibit this approach, the model involves a high degree of complexity in its implementation, and customer confusion will inevitably result if customers are assigned to the auction winner(s) without their affirmative consent, notwithstanding an interpretation of the statute that would allow such a change. The auction process has the potential to create widespread customer dissatisfaction that would impede the long-term development of a retail competitive market, without ensuring the offsetting benefit of reduced costs for customers. See Competitive Market Initiatives, D.T.E. 01-54-B at 15 (2002) ("any decrease in consumer confidence caused by negative public reaction to allegations of electricity slamming could work against the Department's long-term objective of establishing a robust competitive market place.")

5. DOER's Proposal to "Re-Orient Customers" Toward Competitive Suppliers Is Not Consistent with the Restructuring Act

DOER recommends that the Department modify the existing Default Service structure to "provide reinforcement for the necessary shift in customer focus concerning the price and terms of their power supply from distribution companies to competitive

suppliers" (DOER Initial Comments at 35).[15] Specifically, DOER recommends that the Department require distribution companies to:

- inform their Default Service customers of the identity of the entities that provide their power supplies;
- designate each of its Default Service suppliers to serve as the "Power Supply Representative" for a portion of the distribution company's customers commensurate with the supplier's portion of the Default Service load;
- require each Default Service power supplier to operate a toll-free telephone facility to respond to inquiries regarding Default Service from those customers for whom it has been designated Power Supply Representative (Distribution companies would include the telephone number for a customer's Power Supply Representative with appropriate instructions on the customer's bill); and
- require Default Service providers to be "suppliers" licensed by the Department under G.L. c. 164, § 1F.

(id. at 36). In general, NSTAR Electric supports DOER's premise that it is reasonable and appropriate for the Department to take steps to reinforce the idea that the distribution companies are no longer generating electricity for customers and that electricity may now be purchased from a range of competitive service providers, who are licensed by the Department. However, DOER's specific proposal that the Department should require "Default Service providers" to be "suppliers," licensed by the Department under Section 1F, is confusing because it is unclear whether DOER is suggesting that only competitive suppliers should be allowed to provide distribution companies with electric supply for

[15] In its Initial Comments, DOER also makes a number of recommendations involving the pricing and procurement of Default Service, which are discussed below in Sections III and IV of the Company's Supplemental Comments.

Default Service, or that only competitive suppliers should be able to serve as the alternate Default Service provider (in place of the distribution company).

Either way, DOER's proposal is inconsistent with the plain language of G.L. c. 164, § 1B(d), which does not limit the entities from which distribution companies may procure Default Service supplies. DOER appears to be suggesting that the Department either: (1) prohibit wholesale generation companies from providing Default Service supply to distribution companies; or (2) prohibit wholesale generation companies from serving as Default Service providers without submitting to the Department's jurisdiction to regulate them as competitive suppliers under Section 1F.

The Department should not prohibit wholesale generation companies from providing Default Service supply to distribution companies because this action would limit the number of suppliers bidding on the Default Service load and, as a result, would likely increase the cost of Default Service for customers. Moreover, this action would be inconsistent with the Restructuring Act, which does not preclude wholesale generation companies from providing electric supply to serve the distribution companies' Default Service load. See G.L. c. 164, §§ 1A(e) and 1B(d). Thus, although not expressly prohibited by the Restructuring Act, DOER's recommendation would impede competition, raise prices for customers and contravene the intent of the Act.

Moreover, requiring the provider of electric supply for Default Service load to operate a toll-free telephone facility to respond to inquiries regarding Default Service makes no sense if the supplier of the Default Service load is a "generating company." It is unlikely that generating companies will be interested in providing this type of service, and therefore, this policy would have the effect of limiting the pool of interested bidders

in a competitive procurement process. In addition, this requirement will unnecessarily confuse customers who would like to reach their distribution company regarding Default Service issues. Accordingly, the Department should not require Default Service loads to be served by competitive suppliers.

III. DEFAULT SERVICE PRICES SHOULD REFLECT ONLY THOSE COSTS ACTUALLY INCURRED TO PROVIDE THE SERVICE

A. Allowing Costs To Be Included in Default Service Prices That Are Not Incurred by Distribution Companies in Procuring Supply Would Result in Above-Market Rates for Default Service Customers in Violation of the Act and Would Harm Customers

As noted previously, some commenters recommend that the Department allow Default Service prices to reflect billing and other non-energy-related costs, or otherwise "replicate the price that a competitive retail entrant would charge" (see e.g., Centrica Initial Comments at 15; Competitive Retail Suppliers Initial Comments at 6, NEM Initial Comments at 2). However, allowing costs to be included in Default Service prices that are not incurred by distribution companies in procuring the supply would result in above-market rates for Default Service customers, which is not consistent with the public interest. G.L. c. 164, § 1B(d) limits the price of Default Service to the "average monthly market price of electricity." Moreover, customers should not be forced to pay rates for Default Service that exceed the market-based, competitively established costs to serve them, and therefore, only those incremental costs that a distribution company incurs specifically to provide Default Service should be reflected in Default Service prices.[16]

[16] Said another way, only costs that are avoided by the distribution company if a Default Service customer were to choose a competitive retail supplier should be included in the price of Default Service.

For example, a distribution company's costs to provide customer service do not differ between customers taking Default Service and customers purchasing generation services from competitive retail marketers. There are no discernable customer-service costs that are associated exclusively with the generation service procured by a distribution company, nor does the distribution company incur any incremental costs for serving Default Service customers over those costs incurred to provide customer service to all of its customers. Accordingly, customer-service costs should not be included in Default Service prices because such costs cannot be avoided by customers if they take Default Service from an alternate provider. Similarly, the Department should reject the Competitive Retail Suppliers' recommendation to include costs relating to billing, overhead and other costs for which distribution companies incur no incremental costs relating to the provision of Default Service.

For those remaining cost categories that represent incremental Default Service costs for distribution companies, e.g., administrative and bad debt costs specifically related to Default Service, the Department could require such costs to be reflected in Default Service rates.[17] As indicated in NSTAR Electric's Initial Comments, the Company would not conceptually oppose the inclusion in the price of Default Service of avoidable incremental costs actually incurred in providing Default Service generation. However, the Department must maintain a proper relationship between Default Service

[17] With regard to administrative costs, it must be noted that the Department correctly recognized in D.T.E. 99-60 that administrative costs relating to the procurement of Default Service are de minimis. Default Service, D.T.E. 99-60-B at 19. Although Default Service-related bad debt costs are also not particularly significant, the Company does not reject, in concept reflecting such costs in Default Service prices, consistent with the Joint Statement that Default Service prices not be subsidized.

prices and distribution rates in determining how to reflect such costs in distribution rates. For example, in attempting to identify which administrative costs are related to the procurement of Default Service, and thus would be recovered through Default Service rates, the Department must ensure that a distribution company's remaining customers do not incur a disproportionate share of the remaining administrative costs.

B. Default Services Rates Will Reflect Locational Marginal Pricing Without Action By the Department.

Several commenters offered recommendations on whether locational marginal pricing ("LMP") costs should be included in the price of Default Service (see Bay State Initial Comments, at 2; DOER Initial Comments at 33; Dominion Initial Comments at 3; see also ISO-New England Initial Comments at 4-6). LMP is a component of the Standard Market Design initiative that is being implemented by ISO-NE. LMP is designed to reflect the marginal cost of supplying energy at a particular location, including the cost of transmission congestion, in order to establish price signals that will encourage the addition of generation and/or transmission investment in that location and enable customer-initiated demand-response efforts. ISO-NE is currently scheduled to implement LMP in March 2003. However, no action is required by the Department to incorporate LMP into the Default Service rate because the entities bidding to supply Default Service must take LMP into account in establishing prices for the distribution companies. Also, because implementation of LMP is still in the early stages, there are many issues that must be resolved before a determination can be made to as to the way in which LMP should be differentiated, if at all, on customer bills.

For example, NSTAR Electric is composed of the service territories of Commonwealth Electric, which is in the SEMA zone, Cambridge Electric, which is in the

NEMA zone and Boston Edison, which is primarily located in the NEMA zone.[18] Since NSTAR Electric solicits bids for Default Service by service territory, NSTAR Electric's bidding process will result in the identification of a Default Service price for each service territory that reflects the cost of delivering power into the zones in which the service territories are located. Accordingly, the issue is not whether LMP will be reflected in the cost of Default Service, but rather whether LMP should be differentiated on customer bills. As discussed below, principles of customer confusion and administrative cost, make it highly doubtful that such differentiation makes sense, especially in the absence of any experience on the way in which LMP will work.

In that regard, NSTAR Electric is in only the early stages of a comprehensive planning process to implement LMP. For example, the Company is analyzing what measures must be taken to ensure that the billing system has the capability to accommodate LMP and to reflect differing (zone) prices on customer bills in relation to Default Service. Moreover, business processes must be put in place to deal with the LMP pricing framework and the changes that can occur in the zone designation for customers. The changes to information systems, the development of necessary business processes and, most importantly, customer education, will necessitate the expenditure of considerable time and resources. Although NSTAR Electric believes that appropriate business rules and billing protocols can be developed to accommodate LMP, it is appropriate to allow for some experience with the new standard-market design framework being implemented by ISO-NE before significant costs are incurred to alter

[18] Approximately 93 percent of Boston Edison's customers are located in the NEMA zone and 7 percent are located in the SEMA zone. Thus, the differentiation of LMP on customer bills is relevant only to a de minimis segment of Boston Edison's customer base.

billing systems and business processes to bring those changes to the retail customer level.

For example, experience may reveal that the differences in the price of electric generation among zones is minimal. Under those circumstances, the Department may determine that the cost of implementing changes at the customer level, and the customer confusion that may be produced by such changes, is not warranted. Conversely, such a great disparity may exist between zones that reflecting zonal prices in Default Service may have the potential to affect economic development. Thus, with some experience in hand, the Department will be in a better position to determine whether and how LMP is included on customer bills.

DOER recommends that the Department should require distribution companies to implement zonal Default Service pricing for medium and large C&I customers and average pricing for mass-market customers at least until the end of the Standard Offer period (DOER Initial Comments at 32-33). Although NSTAR Electric agrees that it may be appropriate to differentiate between medium and large C&I customers and smaller customers in implementing LMP, some experience with the new system is needed before changes to the current system are implemented at the customer level, regardless of the size of the customer. Accordingly, NSTAR Electric recommends that the Department monitor the evolution of the ISO-NE standard-market model, including the establishment of LMP for at least a 12-month period before requiring significant changes to the billing processes to differentiate LMP for medium and large C&I customers. As recommended by DOER, LMP should not be differentiated for smaller customers at least until the end of the Standard Offer period, if ever.

IV. PROCUREMENT POLICIES SHOULD BE ANALYZED AGAINST A STANDARD OF WHETHER THEY PROVIDE CUSTOMERS WITH A DEMONSTRABLE NET BENEFIT

A. DOER's Procurement Recommendations Are Unnecessarily Complex and Will Not Result in Meaningful Price Signals

In its Initial Comments, DOER recommends that current procurement process for smaller customers be modified to allow for two-year, partial requirements contracts, with a new contract for one-eighth of a company's Default Service demand commencing each quarter of the year (DOER Initial Comments at 4, 17-24). DOER states that this approach would result in a portfolio of staggered contracts with prices for each month that could be averaged to provide a single monthly supply acquisition price for inclusion in the price charged to all smaller Default Service customers (id. at 4). For medium and large C&I customers, DOER recommends that Default Service be procured in six-month contracts, consistent with current practice, but that the procurement should be modified to employ two, partial-requirements solicitations, staggered quarterly to improve the reflection of changing market conditions and more timely pricing changes (id. at 24).

DOER's stated objectives in implementing its proposed procurement system are that it would: (1) avoid "significant and abrupt" price changes associated with the procurement of the entire load at six-month intervals (id. at 12-13); and (2) eliminate disadvantages for competitive suppliers that occur when price increases are not reflected in Default Service prices during the six-month price period (id. at 13). Accordingly, DOER posits that its proposals will "spur increased availability of competitive options" by creating opportunities for competitive suppliers to differentiate their products and providing customers with "forward default service pricing information" necessary for customers to evaluate those options (id. at 19).

DOER's recommendations highlight the fact that a balance must be struck between the desire to achieve a level of price stability for customers and the desire to ensure that accurate and appropriate price signals are available in the market place for the benefit of customers and the competitive suppliers that may want to serve customers in Massachusetts. Although NSTAR Electric agrees that staggered procurements of Default Service supply can work to minimize the sharp pricing changes that can result between procurements, DOER's proposal raises several concerns for the Company. First, the procurement program outlined by DOER is unduly complicated and has the potential to increase prices for customers by eliminating purchasing economies through the disaggregation of purchases into "one-eighth increments." Specifically, prices for Default Service may be higher under DOER's proposal because the load for which the supply would be procured will be substantially less than the load for which the distribution companies currently purchase Default Service supply.

Second, DOER's proposal sacrifices market-price sensitivity to minimize price volatility for "mass market" customers. Under DOER's pricing proposal, the price of Default Service would fluctuate only moderately over time, as each 1/8 Default Service supply contract goes into effect and its costs are averaged into the price of Default Service for the remaining Default Service load. As noted by FG&E, DOER's procurement proposal would result in the "smoothing" of the peaks and valleys of Default Service prices for small customers and, in effect, act as a "price cap" over a relatively long period of time, as compared to prices that would be reflected under the Department's current policy (FG&E at 5). While recognizing that the change embodied in any single new procurement would be given only one-eighth weight, DOER states that

more frequent procurements would "improve the timeliness in reflecting market conditions," as compared to the current practice of semi-annual or annual procurements (id. at 21). However, given a "one-eighth" weighting, it is unlikely that changing market conditions would be reflected in Default Service prices as a result of one or more procurements, even if a dramatic difference (upward or downward) in market prices has occurred. Therefore, under the DOER proposal, customers will not receive appropriate price signals to guide their energy-supply decisions.

Moreover, DOER's proposal is unlikely to have a positive impact on the competitive marketplace. DOER claims that the recommended approach will spur increased availability of competitive options for mass market customers by creating an opportunity for competitive suppliers to differentiate their products to provide greater savings, price stability or price certainty (id. at 19-20). In fact, the price stability created by DOER's procurement system may "compete" with pricing products that competitive suppliers' would want to offer to customers. In addition, creating the Default Service price structure advocated by DOER means that when prices are falling, the Default Service rate will remain stable, enabling competitive suppliers to offer lower prices. Alternatively, when prices are rising, competitive suppliers will face low Default Service rates, which will impair their ability to attract customers. Thus, the opportunities or obstacles created for competitive suppliers at any given time will largely be a function of the way in which market prices are changing in relation to the relatively stable Default Service price. Such a dynamic would contribute to the "boom or bust" phenomenon that DOER is looking to avoid in implementing its proposal (DOER at 13).

In evaluating DOER's proposal, the Department should to consider whether price stability is the overriding objective that it is seeking to achieve in this proceeding. NSTAR Electric agrees that a degree of price stability is desirable for smaller customers. However, DOER's proposal, with its frequent and relatively small procurements, will result in a high degree of price stability (i.e., a price cap as noted by FG&E), and because the resulting prices will be unresponsive to changes in market conditions, the price of Default Service may not reflect the cost of electric supply in the market at the time that the energy is consumed by the customer. Conversely, the current procurement process is more responsive to changes in market prices (in six-month increments), but has the potential to result in significant price changes between procurement periods. NSTAR Electric believes that a procurement strategy that merits Department consideration is the staggered purchase of 50 percent of the load for one-year increments. This would represent a reasonable balance of price stability and market responsiveness in establishing the price of Default Service. Specifically, less frequent procurements than proposed by DOER would result in a Default Service price that approximates the movement of market prices, without subjecting customers to unreasonable price fluctuations or the volatility of the spot market. Appendix A illustrates how Default Service prices would have been set for 2001 and 2002 under this procurement strategy:

In reaching a determination as to the changes, if any, that should be made to current procurement schedules, the Department will need to identify its objectives in making such changes. In general, NSTAR Electric recommends that the Department refrain from adopting procurement policies that tend to result in Default Service prices that are relatively unresponsive to fluctuations in the prices available in the market place,

since such policies would preclude the development of a level playing field for competitors. Moreover, NSTAR Electric believes that it is important that any procurement policies put in place maintain sufficient flexibility for the distribution company to obtain the best possible price for customers.

B. The Department Should Not Require Distribution Companies to Enter Into Long-Term Contracts for Renewable Electric Supplies

The Environmental Group and MTC's Initial Comments include recommendations regarding the stimulation of the renewable energy market through Default Service procurement policy. Specifically, the Environmental Group recommends that the Department enable distribution companies to include a long-term contractual element in Default Service (and Standard Offer) procurement to comply with the state's renewable portfolio standards ("RPS") in a "cost-effective manner" (Environmental Group Initial Comments at 9).[19] Similar to the Environmental Group, MTC recommends that the Department modify Default Service to enable the success of RPS by allowing procurement of renewable supply pursuant to long-term contracts (MTC Initial Comments at 8). The organization also recommended that the Department give

[19] The Environmental Group's specific recommendations include: (1) enabling a long-term contractual element in Standard Offer and Default Service to permit compliance with RPS regulations in a cost-effective manner, (2) requiring distribution companies to solicit long-term proposals for GIS certificates for Default Service RPS compliance; (3) alternatively, requiring distribution company to procure separately certificates for compliance of Default Service with RPS requirements; (4) specifying that a criterion for evaluating bids for Default Service is the extent to which the bid terms are consistent with the Restructuring Act's promotion of renewable energy and with implementation of the RPS; and (5) directing distribution companies to enter into a "laddered" portfolio of long-term renewable contracts and to require competitive suppliers pick up those contracts in proportion to the load that they take from the distribution company (Environmental Group Initial Comments at 9-11).

distribution companies financial incentives to assume some risk in purchasing renewable supply (id. at 9).

Although NSTAR Electric supports the policy objectives of both the Environmental Group and the MTC in encouraging the development of reliable and cost-effective renewable electric supplies, the Company does not support the use of long-term purchasing contracts to accomplish those objectives. Reliance on long-term contracts for the procurement of electric supply would be inconsistent with the policies embodied in the Restructuring Act that attempt to reduce stranded generation costs of distribution companies. Moreover, long-term contracts are not necessary to support the development of renewable energy supplies because the Restructuring Act includes provisions aimed at providing financial incentives for the development of renewable energy through the MTC's Renewables Trust. DOER's Renewable Power Supply regulations require distribution companies to include an increasing amount of renewable supply in their Default Service (and Standard Offer Service) load at least through 2009.[20] Accordingly, although the policy objectives of the Environmental Group and MTC are important and must be considered in relation to the procurement of Default Service supplies, the Department should not require distribution companies to procure renewable supplies via long-term contracts.

[20] DOER appropriately allows distribution companies to comply with its RPS regulations by making an Alternative Compliance Payment ("ACP") of $50 per megawatt-hour (in 2003) to the MTC. Accordingly, distribution companies should continue to have the flexibility to comply with the RPS by either procuring renewable supply or through the ACP, depending on which option provides customers with reasonable Default Service rates, consistent with Department precedent.

V. CONCLUSION

Many of the "retail" Default Service proposals recommended in the Initial Comments are aimed at an abstract goal of "increasing retail competition" in the electricity market in the short term. As a result, most of the proposals submitted for the Department's consideration in this proceeding are explicitly designed to "jump start" competition, even at the expense of smaller customers, and none of these proposals offer the Department a reasonable mechanism to build participation of smaller customers in the competitive marketplace without cost increases, unwarranted confusion and the potential for significant levels of customer dissatisfaction.

Conversely, the existing Default Service model has proven to provide customers with market-based prices, a high level of customer protection and reliable service. Therefore, consistent with the Initial Comments of NSTAR Electric and the Joint Statement offered by NSTAR Electric, the Attorney General, and MASSCAP, and endorsed by the Unions, the Department should carefully evaluate proposals to determine whether the proposed changes meet a set of customer-oriented principles for the procurement and pricing of Default Service.

NSTAR Electric appreciates the opportunity to submit comments in this proceeding and looks forward to participating in the Department's consideration of Default Service issues.

Date: September 9, 2002